SAN FRANCISCO
BAYKEEPER®

February 24, 2017



*VIA CERTIFIED MAIL*
*RETURN RECEIPT REQUESTED*

Darling Ingredients, Inc.
251 O'Connor Ridge Boulevard, Suite 300
Irving, Texas 75038

Agent for Service of Process for
Darling Ingredients, Inc.
C T Corporation System
818 W. 7th Street, Suite 930
Los Angeles, California 90017

Darling Ingredients, Inc.
Attention: Steve Pieroni
P.O. Box 880006
San Francisco, California 94188

**Re: Notice of Violation and Intent to File Suit under the Clean Water Act**

To Whom It May Concern:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") regarding violations of the Clean Water Act,[1] California's Industrial Storm Water Permit[2] ("Storm Water Permit"), San Francisco's Public Works Code, Article 4.1 – Industrial Waste[3] ("Pretreatment Ordinance"), and Class I Wastewater Permits issued by the San Francisco Public Utilities Commission ("PUC")[4] ("Pretreatment Permits") occurring at the industrial facility with its main address at: 429 Amador Street, San Francisco, California 94124 ("Facility"). The purpose of this letter is to put Darling Ingredients, Inc. ("Darling"), as the owner and/or operator of the Facility, on notice of the violations of the Clean Water Act, the Storm Water Permit, the Pretreatment Ordinance, and the Pretreatment Permits occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters and discharges of polluted, inadequately treated wastewater from the Facility into the publicly owned treatment works. Violations of the Storm Water Permit, the Pretreatment Ordinance, and the Pretreatment Permits are violations of the Clean Water Act. As explained below, Darling is liable for violations of the Storm Water Permit, the Pretreatment Ordinance, the Pretreatment Permits, and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C.

---

[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ.
[3] Public Works Code, Article 4.1 of the San Francisco Municipal Code.
[4] Permit No. 10-06513 Industrial User Class I Wastewater Permit; Permit No. 13-06983 Industrial User Class I Wastewater Permit; Permit No. 16-06568 Industrial User Class I Wastewater Permit.

§ 1365(a), a citizen must give notice of his/her intention to file suit. The Clean Water Act requires that notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the chief administrative officer of the water pollution control agency for the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). Additionally, section 139 of the Pretreatment Ordinance requires notice be given to the General Manager, City Attorney, District Attorney and the alleged violator.

This letter is being sent to you as the responsible owner and/or operator of the Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Darling that Baykeeper intends to file a federal enforcement action against Darling for violations of the Storm Water Permit, the Pretreatment Permits, the Pretreatment Ordinance, and the Clean Water Act sixty (60) days from the date of this Notice Letter.

## *I. BACKGROUND*

### A. San Francisco Baykeeper

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in Oakland, California. Baykeeper's purpose is to protect and enhance the water quality and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of its ecosystems and communities. Baykeeper has more than five thousand members and supporters who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are negatively affected by the pollution caused by the Facility's operations.

### B. The Owner and/or Operator of the Facility

Information available to Baykeeper indicates that Darling Ingredients, Inc., is an owner and/or operator of the Facility. Baykeeper refers to Darling Ingredients, Inc. as the "Facility Owner and/or Operator." Darling Ingredients, Inc. is an active Delaware corporation registered to operate in California, and its registered agent is: C T Corporation System, 818 W. 7th Street, Suite 930, Los Angeles, California 90017. In 2014, Darling International, Inc. changed the corporation's name to Darling Ingredients, Inc.

As explained herein, the Facility Owner and/or Operator is liable for violations of the Storm Water Permit, Pretreatment Permits, Pretreatment Ordinance, and the Clean Water Act.

### C. The Facility's Storm Water Permit Coverage

Facilities that discharge storm water associated with specified industrial activities are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding ¶¶ 12, 17.

Darling obtained Storm Water Permit coverage on April 17, 1992. The NOI submitted on May 21, 1997 ("1997 NOI") identifies the owner/operator of the Facility as "Darling International, Inc.," and the Facility name and location as "Darling International Inc., 429 Amador Pier 92, San Francisco, CA 94124." On June 9, 2015, Darling submitted an NOI to continue the Facility's coverage under the Storm Water Permit ("2015 NOI"). The 2015 NOI identifies the owner/operator of the Facility as "Darling Ingredients, Inc." and the Facility name and location as "Darling Ingredients Inc., 429 Amador, San Francisco, CA 94124." The 2015 NOI lists the Facility as "6 acres," the industrial area exposed to storm water is listed as "6 acres," and the percentage of imperviousness is not listed. The 2015 NOI lists the Waste Discharge Identification ("WDID") number for the Facility as 2 38I005930.

The 1997 and 2015 NOIs list the Standard Industrial Classification ("SIC") code for the Facility as 2077. SIC code 2077 facilities must obtain Storm Water Permit coverage for the entire facility. *See* Storm Water Permit, Attachment A, ¶ 2. The Facility's Storm Water Pollution Prevention Plan ("SWPPP") states that the Facility constitutes five (5) drainage areas.[5]

## D. The Pretreatment Ordinance and the Facility's Wastewater Permit Coverage

Indirect dischargers are those dischargers whose wastewater passes through publicly owned treatment works ("POTWs"). *See Nat'l Assoc. of Metal Finishers v. EPA*, 719 F.2d 624, 633 (3d Cir. 1983). Congress regulated these dischargers in recognition that "the pollutants which some indirect dischargers release into POTWs could interfere with the operation of the POTWs, or could pass through the POTWs without adequate treatment." *Id.* Accordingly, indirect dischargers are required to comply with pretreatment standards promulgated by EPA under section 307 of the Clean Water Act and pretreatment standards promulgated by local POTWs. *Chem. Mfrs. Assoc. v. Natural Res. Def. Council*, 470 U.S. 116, 119 (1985); 40 C.F.R. § 403.8. These pretreatment standards are meant to "prevent the discharge of any pollutant through [the POTW], which pollutant interferes with, passes through or otherwise is incompatible with such works," and are enforceable effluent limitations. 33 U.S.C. § 1317(b)(1); *Sierra Club v. Union Oil Co.*, 813 F.2d 1480, 1482 (9th Cir. 1987). Pretreatment standards establish numeric limits on discharges by specific categories of industrial sources. *Nat'l Assoc. of Metal Finishers*, 719 F.2d at 634; 40 C.F.R. § 403.6. Indirect discharger permits establish effluent limits, as well as self-monitoring, sampling, reporting, notification, and recordkeeping requirements. *Id.* (citing 40 C.F.R. § 403.8(f)(1)). Indirect dischargers must monitor and report the concentration of each discharged regulated pollutant. *Int'l Union v. Amerace Corp.*, 740 F. Supp. 1072, 1079 (D.N.J. 1990) (citing 40 C.F.R. § 403.12(e)(1)).

The Pretreatment Ordinance establishes the PUC's pretreatment program, including permit requirements, local limits and prohibitions for pollutant discharges into its POTW, and monitoring and reporting requirements, as required by the Clean Water Act. 40 C.F.R. § 403.8; *see also* Pretreatment Ordinance §§ 118, 123, 124, 125, 127. Indirect dischargers such as Darling are required to comply with the terms of the Pretreatment Ordinance. *Ferro Merch. Equip. Corp.*, 1988 U.S. Dist. LEXIS, at *5-6; *Inland Empire Waterkeeper v. Uniweb, Inc.*, 2008 U.S. Dist. LEXIS 75585, at *4-5 (C.D. Cal. Aug. 6, 2008); 40 C.F.R. § 403.4.

---

[5] Darling uploaded its most recently revised SWPPP to the Storm Water Multiple Application & Report Tracking System ("SMARTS") database on January 30, 2017.

Pursuant to the Pretreatment Ordinance, Darling obtained permits to discharge industrial wastewater and storm water into the POTW in 2010, 2013, and 2016. Darling's current Pretreatment Permit authorizes Darling to discharge all wastewater through the side sewer(s) located on Amador Street, as shown in the Facility's layout/site plan.

### E. Storm Water and Wastewater Pollution and the Waters Receiving Darling's Discharges

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Based on EPA's Industrial Stormwater Fact Sheet for Sector U, Food and Kindred Products Facilities, polluted discharges from rendering plants such as the Facility contain biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), oil and grease, pH, and nitrogen. Discharges of polluted storm water to San Francisco Bay and its tributaries from the Facility adversely affect the aquatic environment.

Based on EPA's Report to Congress: Implementation and Enforcement of the Combined Sewer Overflow Control Policy, polluted storm water and commingled wastewater discharged into San Francisco's combined sewer system from industrial facilities such as Darling's can, and does, discharge directly into surface waters as combined sewer overflows ("CSOs").[6] CSOs are untreated discharges of human waste and pollutants discharged by commercial and industrial establishments, and are major sources of water pollution. Discharges of CSOs into San Francisco Bay and its tributaries are known to cause adverse human health effects (e.g., gastrointestinal illness), beach closures, shellfish bed closures, toxicity for aquatic life, and aesthetic impairment. Organic compounds, metals, oil, grease, and toxic pollutants, among other pollutants of concern, contained in CSOs harm aquatic life, have adverse public health effects, and cause fishing and shellfishing restrictions. BOD in CSOs results in reduced oxygen levels and fish kills. As part of San Francisco's combined sewer system, there are several outfalls designed to discharge CSOs into Islais Creek, which is part of the system's "Central Basin."

The Facility discharges into the combined sewer system and into a separate municipal storm sewer system. These sewer systems discharge into Islais Creek, which drains to San Francisco Bay ("Receiving Waters"). The Receiving Waters are ecologically sensitive areas. Although pollution

---

[6] Combined sewer systems are "wastewater collection systems designed to carry sanitary sewage, industrial and commercial wastewater, and storm water runoff from rainfall or snowmelt in a single system of pipes to a publicly owned treatment works," which are designed to discharge directly to surface waters during wet weather when the POTW capacity is met. *See* EPA CSO Control Policy Report to Congress, December 2001, pp. 1-1 – 1-2.

and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") issued the *Water Quality Control Plan (Basin Plan) for the San Francisco Bay Basin* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters are: industrial service supply, shellfish harvesting, fish migration, preservation of rare and endangered species, fish spawning, commercial and sportfishing, estuarine habitat, wildlife habitat, recreational activities involving contact with water, recreational activities involving proximity to water, and navigation. *See* Basin Plan at Table 2-1. According to the 2010 303(d) List of Impaired Water Bodies, Islais Creek is impaired for ammonia, chlordane, dieldrin, hydrogen sulfide, PAHs, and sediment toxicity.[7] Central San Francisco Bay is listed as impaired for chlordane, DDT, dieldrin, dioxin compounds, furan compounds, invasive species, mercury, PCBs, selenium, and trash.[8] Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.

## *II. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS*

### A. The Facility Site Description and Industrial Activities

The Facility is an active animal by-product recycling operation. Accordingly, the Facility's industrial activities include, but are not limited to: animal by-product (fat and bone, offal and used cooking oil) recycling to produce tallow, yellow grease, and meat and bone meal; and vehicle maintenance, vehicle fueling, and vehicle parking.

### B. Pollutants and Sources of Pollutants Associated with Darling's Industrial Activities

Information available to Baykeeper indicates that pollutants associated with operations at the Facility include, but are not limited to: TSS, oil and grease, pH, aluminum, copper, iron, zinc, nitrogen nitrate + nitrite ("N+N"), BOD, chemical oxygen demand ("COD"), litter, diesel, transmission and hydraulic oil, motor oil, antifreeze, lubricants, and other pollutants.

Information available to Baykeeper indicates that sources of these pollutants associated with

---

[7] U.S. Environmental Protection Agency, Final 2010 Integrated Report (CWA Section 303(d) List/305(b) Report), http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml (Oct. 11, 2011).

[8] *Id.*

operations at the Facility include, but are not limited to: the processing plant; meat and bone meal silos and loading area; grease traps wash tanks area; temporary vehicle parking areas; miscellaneous outdoor storage areas; treatment chemicals storage area; raw materials unloading area; cooking oil tank farm; vehicle and equipment maintenance area; vehicle wash area; vehicle fueling area; tallow tank farm area; and the tallow loading/unloading area.

### C. Facility Storm Water and Wastewater Flows and Discharge Locations

Industrial storm water in the central part of the Facility is collected, treated in the on-site wastewater treatment system, and discharged to the City of San Francisco's combined sewer system. Storm water in the western part of the Facility flows directly to the City of San Francisco's combined sewer system. Storm water in the northeast corner of the Facility flows to two (2) storm water inlets at Amador Street, which discharge to an outfall at Islais Creek Channel, approximately 500 feet northwest of the Facility. Storm water from a localized area in the southwestern part of the Facility enters a storm drain inlet and discharges to Islais Creek.

Industrial wastewater from the Facility is discharged into the combined sanitary sewer at the side sewers on Amador Street. Storm water commingles with the Facility's industrial wastewater before the mixed discharges enter the pretreatment process at the Facility. At the main plant, the pretreatment process includes a flow equalization basin, dissolved air flotation, and a contact chamber. A "Darling Wastewater Flowchart" dated April 2016 does not indicate whether wastewater and storm water that enters the terminal collection pit is subject to pretreatment prior to discharging into the sanitary sewer. Darling reports that its average wastewater discharges in 2016 were 70,000 gallons per day.

The PUC has collected samples from the Facility's wastewater discharges at three locations: (1) terminal pit, (2) manhole 1, and (3) manhole 2. The Facility Owner and/or Operator has collected samples from the Facility's wastewater discharges at the "sample box" and the "condensate pit."

## *III. VIOLATIONS OF THE CLEAN WATER ACT, THE STORM WATER PERMIT, AND THE PRETREATMENT PERMITS*

### A. Violations of the Storm Water Permit

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Baykeeper refers to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued. For purposes of this Notice Letter, Baykeeper refers to the reissued permit as the "2015 Permit." The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Finding ¶ 6. Accordingly, Darling is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982)

(relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect.").

1. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Effluent Limitations

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of Best Management Practices ("BMPs") that achieve Best Available Technology Economically Achievable ("BAT") for toxic[9] and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.[10] The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A. EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.[11] Based on the Receiving Waters, the Benchmark values for marine waters apply here. The 2015 Permit includes "Numeric Action Levels" ("NALs") derived from these Benchmark values, but the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. 2015 Permit, Finding ¶ 62.

The Facility's self-reported exceedances of Benchmark values over the last five (5) years, identified in Attachment 2 to this letter, indicate that Darling has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Storm Water Permit. Baykeeper alleges and notifies Darling that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values for TSS, oil and grease, pH, COD, BOD, N+N, iron, aluminum, copper, and zinc.

The Facility's ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that Darling has not developed and implemented sufficient BMPs at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all storm water prior to discharge, frequent sweeping to reduce the build-up of pollutants on-site, installing filters in downspouts and storm drains, and other similar measures.

---

[9] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, arsenic, lead, benzene, and zinc, among others.

[10] Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

[11] The Benchmark values are part of EPA's Multi-Sector General Permit ("MSGP") and can be found at: http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm. The most recent sector-specific Benchmarks can be found at: http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_part8.pdf ("2015 MSGP"). SIC Code 2077 is covered under Sector U in the 2015 MSGP.

Baykeeper puts the Facility Owner and/or Operator on notice that the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Attachment 3 (setting forth dates of rain events resulting in a discharge at the Facility).[12] These discharge violations are ongoing and will continue every time Darling discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Baykeeper will update the dates of violations when additional information and data become available. Each time Darling discharges polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

Further, Baykeeper puts the Facility Owner and/or Operator on notice that 2015 Permit Effluent Limitation V.A. is a separate, independent requirement with which Darling must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. Thus, even if the Facility Owner and/or Operator submits an Exceedance Response Action Plan pursuant to Section XII. of the 2015 Permit, the violations of Effluent Limitation V.A. described in this Notice Letter are ongoing.

2. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[13] The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Applicable WQS are set forth in the California Toxics Rule ("CTR")[14] and Chapter 3 of the Basin Plan.[15] *See* Attachment 1. Discharges that contain pollutants in excess of an applicable WQS are violations of the Storm Water Permit, the CTR, and the Basin Plan. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water

[12] Dates of significant rain events are measured at the San Francisco Downtown Rain Station. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility. http://www.ncdc.noaa.gov/cdo-web/search.

[13] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

[14] The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31,682 (May 18, 2000).

[15] The Basin Plan is published by the Regional Board at: http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan.

Limitation VI.A. The 2015 Permit NALs do not represent water quality based criteria relevant to determine whether an industrial facility has caused or contributed to an exceedance of a WQS.

The Basin Plan establishes WQS for San Francisco Bay and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. The Basin Plan, Tables 3-3 and 3-3A, identify specific saltwater water quality objectives for toxic pollutants.[16]

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B. Storm water discharges that cause or threaten to cause pollution, contamination, or nuisance also constitute violations of the Storm Water Permit. *See* 1997 Permit, Discharge Prohibition A(2); 2015 Permit, Receiving Water Limitation VI.C.

Baykeeper alleges that the Facility's storm water discharges have caused or contributed to exceedances of the Receiving Water Limitations in the Storm Water Permit and applicable WQS. These allegations are based on the Facility's self-reported data submitted to the Regional Board. The sampling results indicate that the Facility's discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impact human health or the environment; and violate applicable WQS. For example, the Facility's sampling results indicate exceedances of numeric WQS for copper, zinc, and pH. *See* Attachment 2.

---

[16] Basin Plan, Tables 3-3 and 3-3A are available at: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/bp_ch3+tables.pdf.

Baykeeper puts the Facility Owner and/or Operator on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See* Attachment 3. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges of storm water from the Facility cause or threaten to cause pollution, contamination, or nuisance is a separate and distinct violation of Discharge Prohibition A(2) of the 1997 Permit, Receiving Water Limitation VI.C of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Baykeeper will update the dates of violation when additional information and data becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

Further, Baykeeper puts the Facility Owner and/or Operator on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which Darling must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. Even if the Facility Owner and/or Operator submits an Exceedance Response Action Plan pursuant to Section XII. of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

3. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan

The Storm Water Permit requires permittees to develop and implement SWPPPs prior to conducting, and in order to continue, industrial activities. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

a. 1997 SWPPP Requirements

Section A(1) and Provision E(2) of the 1997 Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the 1997 Permit SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as

necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A(9) and (10). Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

b. 2015 SWPPP Requirements

As with the SWPPP requirements of the 1997 Permit, Sections X(A)-(H) of the 2015 Permit require dischargers to develop and implement a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutant control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit, Sections X(A)-(H).

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Sections X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and

evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Sections X(B) and Section XV.

c. The Facility Owner and/or Operator Have Violated and Continue to Violate the Storm Water Permit SWPPP Requirements

Information available to Baykeeper indicates that the Facility Owner and/or Operator has been and continues to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, Darling's past or current SWPPP has not/does not include and/or Darling has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with the Storm Water Permit, as evidenced by the data in Attachment 2.

The Facility Owner and/or Operator also fails to include the information required by the Storm Water Permit, including but not limited to, locations of significant spills and leaks, list of industrial materials that have spilled or leaked in significant quantities and have discharged from the facility's storm water conveyance system within the previous five-year period, narrative assessment of likely pollutants present in storm water discharges, and full BMP descriptions.

The Facility Owner and/or Operator has failed and continues to fail to adequately develop, implement, and/or revise the SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least February 24, 2012. These violations are ongoing, and Baykeeper will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

4. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

The Storm Water Permit requires permittees to develop and implement storm water monitoring and reporting programs ("M&RPs") prior to conducting, and in order to continue, industrial activities. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

a. 1997 Permit Requirements

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3)-B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one (1) storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

Section B(7)(a) of the 1997 Permit requires facilities to "collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges." Section B(5)(c)(ii) of the 1997 Permit required facilities to sample for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section (B)(5)(c)(iii) of the 1997 Permit requires facilities to sample for specific analytical parameters based on their standard industrial classification ("SIC") code. For facilities that fall into SIC Code 207X, Fats and Oils, these parameters are BOD, COD, TSS, and N+N.

b. 2015 Permit Requirements

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's storm water discharges, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

The 2015 Permit *increases* the frequency of visual observations as compared to the 1997 Permit. Section XI(A) requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

Section XI(B)(1-5) of the 2015 Permit requires permittees to collect storm water discharge samples from qualifying storm events[17] as follows: (1) from each discharge location; (2) from two (2) storm events within the first half of each reporting year[18] (July 1 to December 31); (3) from two (2) storm events within the second half of each reporting year (January 1 to June 30); and (4) within four (4) hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within thirty (30) days of obtaining all results for each sampling event.

The parameters to be analyzed are also consistent with the 1997 Permit, except the 2015 Permit no longer requires specific conductance be sampled. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, oil and grease, and pH. Section XI(B)(6)(c) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial operations. For facilities that fall into SIC Code 207X, Fats and Oils, these parameters are BOD, COD, and N+N.

c. The Facility Owner and/or Operator Has Violated and Continues to Violate the Storm Water Permit M&RP Requirements

The Facility Owner and/or Operator has been and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Facility Owner and/or Operator failed to collect and analyze storm water samples as required by the Storm Water Permit. Under the 1997 Permit and 2015 Permit, Darling self-classified the Facility under SIC Code 2077, Animal and Marine Fats and Oils, but Darling has failed to consistently analyze its storm water samples for BOD, COD, and N+N. Furthermore, Darling's storm water samples from the 2013-2014 and 2014-2015 wet seasons indicate that the Facility's storm water is polluted with aluminum, copper, iron, and zinc, but the Facility stopped analyzing its storm water samples for these parameters. Additionally, Darling collected zero (0) storm water samples during the 2012-2013 wet season.

The Facility Owner's and/or Operator's failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise a M&RP that complies with the requirements of the Storm Water Permit. Every day that the Facility Owner and/or Operator conducts operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit M&RP requirements every day since at least February 24, 2012. These violations are ongoing, and Baykeeper will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

---

[17] The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).
[18] A reporting year is defined as July 1 through June 30. 2015 Permit, Finding ¶ 62(b).

5. Failure to Comply with the Storm Water Permit's Reporting Requirements

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit also includes an annual reporting requirement. *See* 2015 Permit, Section XVI.

The Facility Owner and/or Operator has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. For example, in each Annual Report since the filing of the 2011-2012 Annual Report, the Facility Owner and/or Operator certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Baykeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above Benchmark Levels, thus demonstrating that the SWPPP's BMPs do not adequately address existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including: (1) a description of the noncompliance and its cause; (2) the period of noncompliance; (3) if the noncompliance has not been corrected, the anticipated time it is expected to be corrected; and (4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). The Owner and/or Operator has not reported non-compliance as required.

Information available to Baykeeper indicates that the Facility Owner and/or Operator has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Facility Owner and/or Operator is in daily violation of the Storm Water Permit. Every day the Facility Owner and/or Operator conducts operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit reporting requirements every day since at least February 24, 2012. These violations are ongoing, and Baykeeper will include additional violations when information becomes available. The Facility Owner and/or Operator are subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

6. Failure to Comply with Level 1 Exceedance Response Action Requirements

When the 2015 Permit became effective on July 1, 2015, all permittees were in "Baseline status." *See* 2015 Permit, Section XII(B). A permittee's Baseline status for any given parameter

changes to "Level 1 status" if storm water sampling results indicate an NAL exceedance for that same parameter. *See* 2015 Permit, Section XII(C). Level 1 status commences on July 1 following the reporting year during which the exceedance(s) occurred. *See* 2015 Permit, Section XII(C). By October 1 following commencement of Level 1 status, permittees are required to: (1) complete an evaluation, with the assistance of a Qualified Industrial Storm Water Practitioner ("QISP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s); and (2) identify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the Storm Water Permit. *See* 2015 Permit, Section XII(C)(1)(a)-(c). Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated. *See* 2015 Permit, Section XII(C)(1)(c).

Based upon this Level 1 status evaluation, the permittee is required to, as soon as practicable but no later than January 1 following commencement of Level 1 status, revise the SWPPP as necessary and implement any additional BMPs identified in the evaluation, certify and submit via SMARTS a Level 1 ERA Report prepared by a QISP that includes a summary of the Level 1 ERA Evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL. *See* 2015 Permit, Section XII(C)(2)(a)(i)-(ii). The permittee in Level 1 status must also certify and submit via SMARTS the QISP's identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status. *See* 2015 Permit, Section XII(C)(2)(a)(iii). A permittee's Level 1 status for a parameter will return to Baseline status once a Level 1 ERA report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. *See* 2015 Permit, Section XII(C)(2)(b).

The Facility Owner and/or Operator is in Level 1 status for BOD, COD, and N+N based on NAL exceedances during the 2015-2016 reporting year. Specifically, the annual average for BOD during the 2015-2016 reporting year was 56.75 mg/L, 1.89 times the NAL; the annual average for COD during the 2015-2016 reporting year was 127.5 mg/L, 1.06 times the NAL; and the annual average for N+N during the 2015-2016 reporting year was 1.0838 mg/L, 1.59 times the NAL. Yet, the Facility Owner and/or Operator has failed and continues to fail to conduct an adequate Level 1 status evaluation to identify additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances at the Facility. The Facility Owner and/or Operator has also failed to submit an ERA Level 1 Report and a revised SWPPP detailing necessary additional BMPs to prevent future NAL exceedances, as required.

For example, Darling's ERA Level 1 Report merely recommends the Facility properly implement good housekeeping BMPs. Specifically, Darling's ERA Level 1 Report recommends: (1) BMP training for non-employees; (2) washing truck wheels; (3) cleaning storm water drainage areas "more frequently or more effectively;" (4) relocating parked trucks; and (5) cleaning equipment prior to storage. These BMPs are unlikely to achieve adequate reductions in pollutant loading on site. Accordingly, the Facility Owner and/or Operator's ERA Level 1 evaluation and report fail to meet the requirements of Section XII(C) of the 2015 Permit.

The Facility Owner and/or Operator has failed and continues to fail to conduct an adequate Level 1 status evaluation and an adequate Level 1 ERA Report that complies with the Storm Water Permit. As such, the Facility Owner and/or Operator is in daily violation of the Storm Water Permit. Every day the Facility Owner and/or Operator conducts operations at the Facility without an adequate Level 1 status evaluation and/or an adequate Level 1 ERA Report, as required by the Storm Water Permit, is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's Level 1 status ERA requirements every day since at least July 1, 2016. These violations are ongoing, and Baykeeper will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since July 1, 2016.

**B. Violations of the Pretreatment Permits**

In San Francisco, any person who discharges wastewater into the POTW must comply with the Pretreatment Ordinance and a pretreatment permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1317; 40 C.F.R. § 403.8; *see also* Pretreatment Ordinance §§ 118, 123, 124, 125, 127. Between June 17, 2010, and June 17, 2013, the Pretreatment Permit in effect for the Facility was Permit No. 10-06513, which Baykeeper refers to as the "2010 Permit." Between June 17, 2013, and June 16, 2016, the Pretreatment Permit in effect for the Facility was Permit No. 13-06983, which Baykeeper refers to as the "2013 Permit." Between June 17, 2016, and June 16, 2019, the Pretreatment Permit in effect for the Facility is Permit No. 16-06568, which Baykeeper refers to as the "2016 Permit." Though the 2010 Permit and the 2013 Permit have expired, Darling is liable for violations of those permits and its ongoing violations of the 2016 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect.").

1. The Facility Owner and/or Operator's Violations of Pretreatment Permits Effluent Limitations

Parts I.B. and I.C. of the Pretreatment Permits establish wastewater effluent limitations that require the Facility Owner and/or Operator to meet specific numeric limits for the listed pollutant parameters. Based on wastewater sampling data for the Facility, Darling has violated the Pretreatment Permits wastewater effluent limitations on 53 occasions on 25 days. Attachment 4 attached hereto sets forth the Pretreatment Permits wastewater effluent limitations for the pollutant parameters, and Attachment 5 lists the dates on which an exceedance of the wastewater effluent limitation occurred.

Each time the Facility Owner and/or Operator discharges wastewater into the POTW in excess of the Pretreatment Permits wastewater effluent limitations is a violation of the Pretreatment Permits, the Pretreatment Ordinance, and Section 307 of the Clean Water Act, 33 U.S.C. § 1317.

The PUC has documented these violations by designating Darling as being in significant non-compliance[19] with the Pretreatment Permits and the Pretreatment Ordinance in 2012, 2014, and 2016. On November 1, 2013, the PUC issued a Cease and Desist Order requiring the Facility Owner and/or Operator to take certain remedial actions in response to violations of the 2013 Permit. The PUC also issued the Facility Owner and/or Operator Notices of Violation based on exceedances of the Pretreatment Permits wastewater effluent limitations on November 19, 2010, June 15, 2011, and January 22, 2016. The Facility Owner and/or Operator has violated the Pretreatment Permits wastewater effluent limitations on each date and each occasion listed in Attachment 5. These violations are ongoing, the wastewater effluent limitations of the 2016 Permit are as stringent as the 2010 Permit and 2013 Permit requirements, and Baykeeper will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

2. The Facility Owner and/or Operator's Violations of the Pretreatment Permits Wastewater Prohibitions

Parts I.D. through I.K. establish wastewater prohibitions that require the Facility Owner and/or Operator to prevent certain types of wastewater discharges into the POTW. Part I.E.2. of the Pretreatment Permits prohibit the discharge of pollutants from the Facility into the POTW that will cause corrosive structural damage to the sewerage system, but in no case discharges with pH lower than 5.0 SU. Part I.G. of the Pretreatment Permits prohibits the Facility Owner and/or Operator from increasing the use of process water or, in any other way, attempting to dilute a discharge of wastewater as partial or complete substitute for adequate treatment to achieve compliance with the requirements of the Pretreatment Ordinance.

Based on wastewater sampling data, the Facility Owner and/or Operator has violated Part I.E.2. of the Pretreatment Permits on five (5) occasions by discharging wastewater into the POTW with a pH lower than 5.0 SU. Based on Baykeeper's review of the Facility Owner and/or Operator's pretreatment systems and permit applications, the Facility Owner and/or Operator may be diluting wastewater discharges with commingled storm water at the Terminal Collection Pit as a partial or complete substitute for adequate treatment to achieve compliance with the requirements of the Pretreatment Ordinance in violation of Part I.G. of the Pretreatment Permits.

Each time the Facility Owner and/or Operator discharges wastewater into the POTW in a manner prohibited by the Pretreatment Permits wastewater prohibitions is a violation of the Pretreatment Permits, the Pretreatment Ordinance, and Section 307 of the Clean Water Act, 33 U.S.C. § 1317. The Facility Owner and/or Operator has violated the Pretreatment Permits wastewater prohibitions on each occasion that the Facility's wastewater contained a concentration of pH below 5.0 SU as listed in Attachment 5, and each date that the Facility Owner and/or Operator dilutes its wastewater discharges by commingling storm water discharges as a partial or complete substitute for adequate pretreatment to achieve compliance with the requirements of the Pretreatment Ordinance. These violations are ongoing, the wastewater prohibitions of the 2016 Permit are as stringent as the 2010 Permit and 2013 Permit requirements, and Baykeeper will include additional

[19] "Significant noncompliance" is defined in section 119(hh) of the Pretreatment Ordinance. A discharger need not be in "significant" noncompliance to be in violation of the Pretreatment Ordinance or its permit.

violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

3. The Facility Owner and/or Operator's Violations of the Pretreatment Permit Monitoring Requirements

Part II of the Pretreatment Permits establishes monitoring requirements the Facility Owner and/or Operator must conduct to determine compliance with the Pretreatment Permits. Unless the PUC performs the compliance monitoring in lieu of the Facility Owner and/or Operator, Part II.A. of the Pretreatment Permits requires that the Facility Owner and/or Operator perform self-monitoring at the sampling box located at the northerly entrance to the Facility and at the Terminal Collection Pit at least once every six (6) months. These samples are to be collected as one (1) sample per day for five (5) workdays for each listed pollutant, and must be representative of the Facility's wastewater discharges.

Information available to Baykeeper demonstrates that the Facility Owner and/or Operator has failed and continues to fail to collect the required samples. While the PUC has collected samples from the Facility's wastewater discharges, those samples are not collected for purposes of Part II of the Pretreatment Permits. The PUC samples are collected to determine the sewer service charge rate for the Facility's water account. For example, in January 2011, the PUC "Sewer Service Charge Worksheet" notes that PUC "[s]ampled for [f]ee constituents only due to high bill from 2010 sampling." Accordingly, the PUC did not collect samples of wastewater discharges in lieu of the Facility Owner and/or Operator, and the Facility Owner and/or Operator failed to collect any samples from the sampling box and Terminal Collection Pit at least once every six (6) months for at least the past five (5) years in violation of Part II.A. of the Pretreatment Permits.

If the sampling conducted by the PUC was meant to be in compliance with Part II.A. of the Pretreatment Permits, that sampling did not, and does not, satisfy the requirement set out in Part II.A. that samples be collected from *both* the sampling box and the Terminal Collection Pit. Specifically, samples collected by the PUC that have been analyzed for total oil and grease for the past five (5) years have been collected only from the sample box with one, or possibly two, exceptions.[20] This is a violation of Part II.A. of the Pretreatment Permits which requires the Facility Owner and/or Operator to collect samples at the Terminal Collection Pit at least once every six (6) months and analyze those samples for total oil and grease, among other parameters, if that sampling is not done by the PUC.

Further, if the sampling conducted by the PUC was meant to be in compliance with Part II.A. of the Pretreatment Permits, that sampling did not, and does not, satisfy the Pretreatment Ordinance monitoring requirements, because the PUC did not analyze the collected samples for all parameters for which the Pretreatment Ordinance and the Pretreatment Permits establish wastewater effluent limitations. The Pretreatment Ordinance states: "Any grab sample of the discharger's wastewater

[20] The PUC collected samples of "Condensate from MH#2" from November 14, 2012, through December 7, 2012. It is Baykeeper's understanding that these samples may represent total oil and grease analysis of wastewater discharged from the Terminal Collection Pit. And the PUC collected samples from "Site" in 2013 without any indication whether this sample location is the sample box or the Terminal Collection Pit.

shall not at any time exceed any of the following numerical limitations…" Pretreatment Ordinance § 123(a); *see also* Pretreatment Ordinance § 123(b) (establishing requirements for composite samples); 40 C.F.R. § 403.12(h) ("Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months … a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority"); *see also International Union*, 740 F. Supp. at 1079-80. Section 123(c) of the Pretreatment Ordinance also requires that discharges from the Facility not exceed the numeric effluent limits set forth in Department of Public Works Order No. 158170. As such, samples of wastewater discharges from the Facility must be analyzed for each of the pollutants listed in section 123 to demonstrate the Facility's discharges are in compliance with the Pretreatment Ordinance limitations and prohibitions. Thus, the Facility Owner and/or Operator has failed, and continues to fail, to conduct required self-monitoring for the following pollutants: (1) temperature; (2) hydrocarbon oil and grease; (3) cyanide; and (4) phenols.

Every day the Facility Owner and/or Operator failed to collect samples of the Facility's wastewater discharges as required by Part II.A. of the Pretreatment Permits and/or section 123 of the Pretreatment Ordinance, is a violation of the Pretreatment Permits, the Pretreatment Ordinance, and Section 307 of the Clean Water Act, 33 U.S.C. § 1317. These violations are ongoing, the wastewater prohibitions of the 2016 Permit are as stringent as the 2010 Permit and 2013 Permit requirements, and Baykeeper will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

4. The Facility Owner and/or Operator's Violations of the Pretreatment Permit Special Conditions

The Facility Owner and/or Operator is required to store all hazardous materials and hazardous wastes within a bermed area or by using some other method of secondary containment to prevent spills from entering the combined sewer system. *See* 2010 Permit, Part II.G; 2013 Permit, Part II.H; 2016 Permit, Part II.H.

The Facility Owner and/or Operator is also required to develop and implement a plan to control slug discharges. *See* 2010 Permit, Part II.I; 2013 Permit, Part II.J; 2016 Permit, Part II.J. A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch discharge which has a reasonable potential to cause interference or pass through, or in any other way violate the Pretreatment Ordinance or the Pretreatment Permits. The slug control plan must contain, at a minimum: (1) a description of discharge practices, including non-routine batch discharges; (2) a description of stored chemicals; (3) procedures for immediately notifying the PUC of slug discharges, including any discharge that would violate a prohibition under 40 C.F.R. § 403.5(b), with procedures for follow-up written notifications within five days; and (4) if necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

Information available to Baykeeper, including the 2012 and 2013 annual pretreatment reports submitted to the Regional Board by the PUC, indicates that the Facility Owner and/or Operator has failed and continues to fail to implement adequate secondary containment at the Facility in violation of the Pretreatment Permits.

Information available to Baykeeper, including the 2013 annual pretreatment report submitted to the Regional Board by the PUC, indicates that the Facility Owner and/or Operator has failed and continues to fail to develop and implement an adequate plan to control slug discharges at the Facility in violation of the Pretreatment Permits.

Every day the Facility Owner and/or Operator operates the Facility without adequate secondary containment and without an adequate slug control plan, is a violation of the Pretreatment Permits, the Pretreatment Ordinance, and Section 307 of the Clean Water Act, 33 U.S.C. § 1317. These violations are ongoing, the wastewater prohibitions of the 2016 Permit are as stringent as the 2010 Permit and 2013 Permit requirements, and Baykeeper will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

5. The Facility Owner and/or Operator's Violations of the Pretreatment Permits Reporting Requirements

Part III of the Pretreatment Permits establishes certain reporting requirements. All reports must be signed by an authorized representative of the Facility Owner and/or Operator and must be submitted under penalty of perjury. *See* Pretreatment Permits, Part III.I.

Within thirty (30) days of the effective date of the Pretreatment Permits the Facility Owner and/or Operator must: develop and submit (unless previously submitted) to the PUC: (1) a manual (or self-developed set of instructions) on the proper operation and maintenance of any wastewater treatment system used at the Facility; (2) a drawing showing a flow diagram and the components of the wastewater treatment system; and (3) any required information which has not been submitted in the permittee's wastewater permit application; complete and submit (unless previously submitted) to the PUC a checklist for a Spill Prevention Control and Countermeasures plan, showing facilities and operating procedures to provide protection against spills or accidental discharges of prohibited or regulated materials; and complete and submit (unless previously submitted) to the PUC a checklist for hazardous waste reduction assessment of the Facility. Part III.D. requires that within thirty (30) days of the effective date of the Pretreatment Permits the Facility Owner and/or Operator complete and submit (unless previously submitted) to the PUC a checklist for a storm water pollution prevention plan for the Facility. *See* Pretreatment Permits, Part III.A., Part III.B., and Part III.C.

Part III.E. requires that the Facility Owner and/or Operator submit semi-annual reports on or before August 1 and February 1 annually. The semi-annual reports must cover the periods January 1 to June 30 and July 1 to December 31, respectively, and must include: (1) average and maximum daily flow rates in gallons per day measured or estimated over the six-month reporting period of the industrial wastewater discharges; (2) copies of all analytical results obtained from any voluntary or required self-monitoring, or from split samples provided by the PUC of its industrial wastewater discharges along with chain-of-custody forms; (3) copies of any uniform hazardous waste manifests

and/or other documentation resulting from the shipment off-site of wastes generated in connection with production of wastewater treatment processes at the Facility; (4) a description of any violations of the Pretreatment Ordinance and remedial measures undertaken by the Facility Owner and/or Operator; and (5) a description of any process changes or treatment system alterations.

Based on Baykeeper's review of publicly available information obtained from the PUC, the Facility Owners and/or Operators have failed and continue to fail to develop, complete, and submit the reports required by Parts III.A., III.B., III.C., and III.D. of the Pretreatment Permits.

In addition, the Facility Owner and/or Operator has failed and continues to fail to submit complete and correct semi-annual reports. For example, in its semi-annual reports for 2012, 2013, 2015, and 2016, the Facility Owner and/or Operator reports that "No Notice of Violation has been received." Part III.E.4. of the Pretreatment Permits requires that the Facility Owner and/or Operator's semi-annual reports include a description of any violations of the Pretreatment Ordinance and any remedial actions taken in response. As described above, the Facility Owner and/or Operator was in violation of the Pretreatment Ordinance in 2012, 2013, 2015, and 2016, e.g., the Facility Owner and/or Operator failed to collect required samples and its wastewater discharges exceeded wastewater effluent limitations and prohibitions. The Facility Owner and/or Operator failed to report these violations. In addition, the Facility Owner and/or Operator's semi-annual report dated July 25, 2016, fails to include a description of process changes or treatment system alteration, but simply states, "We implemented process and equipment changes as described in the above referenced response to notice of violation" dated February 8, 2016. The referenced February 8 "response" was not included as an attachment to the semi-annual report and was not submitted under penalty of perjury.

Every day the Facility Owner and/or Operator operates the Facility without adequately developed, completed, and submitted reports required by Parts III.A., III.B., III.C., and III.D. of the Pretreatment Permits is a violation of the Pretreatment Permits, the Pretreatment Ordinance, and Section 307 of the Clean Water Act, 33 U.S.C. § 1317. Every day the Facility Owner and/or Operator failed to submit complete and accurate semi-annual reports as required by Part III.E. of the Pretreatment Permit is a violation of the Pretreatment Permits, the Pretreatment Ordinance, and Section 307 of the Clean Water Act, 33 U.S.C. § 1317. These violations are ongoing, the wastewater prohibitions of the 2016 Permit are as stringent as the 2010 Permit and 2013 Permit requirements, and Baykeeper will include additional violations when information becomes available. The Facility Owner and/or Operator are subject to civil penalties for all violations of the Clean Water Act occurring since February 24, 2012.

## *IV. PERSONS RESPONSIBLE FOR THE VIOLATIONS*

Darling Ingredients, Inc. is the person responsible for the violations at the Facility described above.

*V. NAME AND ADDRESS OF NOTICING PARTY*

San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, California 94612
(510) 735-9700

*VI. COUNSEL*

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

Caroline Koch, Partner
Daniel Cooper, Partner
Lawyers for Clean Water, Inc.
1004A O'Reilly Avenue
San Francisco, California 94129

Caroline Koch: (415) 440-6520 x203, caroline@lawyersforcleanwater.com
Daniel Cooper: (415) 440-6520 x204, daniel@lawyersforcleanwater.com

Nicole C. Sasaki, Associate Attorney
Erica A. Maharg, Managing Attorney
San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, California 94612

Nicole C. Sasaki: (510) 735-9700 x110, nicole@baykeeper.org
Erica A. Maharg: (510) 735-9700 x106, erica@baykeeper.org

*VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT*

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under Clean Water Act section 505(a) against Darling for the above-referenced violations. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to $37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, through November 1, 2015, and $51,570.00 per day per violation for all Clean Water Act violations that occur after November 2, 2015, and are assessed after August 1, 2016.

In addition to civil penalties, Baykeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Baykeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

## *VIII. CONCLUSION*

Baykeeper is willing to meet with you during the 60-day notice period to discuss effective remedies for the violations described in this letter. Please contact me to initiate these discussions.

Sincerely,

Nicole C. Sasaki
Associate Attorney
San Francisco Baykeeper

*Cc*:

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

Bruce Wolfe. Executive Officer
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, California 94102

Dennis Herrera, City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

George Gascon, District Attorney
San Francisco District Attorney's Office
Hall of Justice
850 Bryant, 3rd Floor
San Francisco, California 94112

## Attachment 1: EPA Benchmarks and Water Quality Standards for Discharges to Saltwater

### A. EPA Benchmarks for Marine Waters, 2000 and 2015 Multi-Sector General Permit ("MSGP")

| Parameter | Units | Benchmark value | Source |
|---|---|---|---|
| pH | SU | 6.0 – 9.0 | 2015 MSGP |
| Total Suspended Solids | mg/L | 100 | 2015 MSGP |
| Chemical Oxygen Demand | mg/L | 120 | 2015 MSGP |
| Biochemical Oxygen Demand | mg/L | 30 | 2015 MSGP |
| Nitrate + Nitrite | mg/L | 0.68 | 2015 MSGP |
| Oil and Grease | mg/L | 15 | 2000 MSGP |
| Aluminum Total | mg/L | 0.75 | 2015 MSGP |
| Copper Total | mg/L | 0.0048 | 2015 MSGP |
| Iron Total | mg/L | 1.0 | 2015 MSGP |
| Zinc Total | mg/L | 0.09 | 2015 MSGP |

### B. Water Quality Standards (Basin Plan, Tables 3-3, 3-3A)

| Parameter | Units | WQS Value |
|---|---|---|
| pH | SU | 6.5 – 8.5 |
| Copper | mg/L | 0.0094 |
| Zinc | mg/L | 0.09 |

## Attachment 2: Table of Exceedances for Darling Ingredients, Inc.

Table containing each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of Basin Plan Water Quality Standards. The EPA Benchmarks and Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

| Reporting Period | Sampling Location | Sample Date | Parameter | Result | Unit |
|---|---|---|---|---|---|
| 2013-2014 | SWL-344-1 | 11/19/2013 | Aluminum, Total | 2.7 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | Aluminum, Total | 2.8 | mg/L |
| 2013-2014 | SWL-344-1 | 11/19/2013 | Biochemical Oxygen Demand | 1400 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | Biochemical Oxygen Demand | 560 | mg/L |
| 2013-2014 | SWL-344-1 | 11/19/2013 | Chemical Oxygen Demand | 3700 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | Chemical Oxygen Demand | 1400 | mg/L |
| 2013-2014 | SWL-344-1 | 11/19/2013 | Copper, Total | 0.34 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | Copper, Total | 0.14 | mg/L |
| 2013-2014 | SWL-344-1 | 11/19/2013 | Iron, Total | 4 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | Iron, Total | 3.5 | mg/L |
| 2013-2014 | SWL-344-1 | 11/19/2013 | Nitrogen, Nitrate | 0.79 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | Nitrogen, Nitrate | 3.2 | mg/L |
| 2013-2014 | SWL-344-1 | 11/19/2013 | Nitrogen, Nitrite | 2.2 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | Nitrogen, Nitrite | 0.59 | mg/L |
| 2013-2014 | SWL-344-1 | 11/19/2013 | Oil and Grease | 197 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | Oil and Grease | 29.4 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | pH | 8.7 | SU |
| 2013-2014 | SWL-344-1 | 11/19/2013 | Total Suspended Solids | 360 | mg/L |
| 2013-2014 | SWL-344-1 | 11/19/2013 | Zinc, Total | 5.3 | mg/L |
| 2013-2014 | SWL-344-2 | 11/19/2013 | Zinc, Total | 1.3 | mg/L |
| 2013-2014 | SWL-344-3 | 11/20/2013 | Aluminum, Total | 0.84 | mg/L |
| 2013-2014 | SWL-344-3 | 11/20/2013 | Copper, Total | 0.011 | mg/L |
| 2013-2014 | SWL-344-3 | 11/20/2013 | Iron, Total | 1.1 | mg/L |
| 2013-2014 | SWL-344-3 | 11/20/2013 | Zinc, Total | 0.11 | mg/L |
| 2013-2014 | SWL-344-2 | 2/26/2014 | Aluminum, Total | 2.2 | mg/L |
| 2013-2014 | SWL-344-3 | 2/26/2014 | Aluminum, Total | 1.1 | mg/L |
| 2013-2014 | SWL-344-1 | 2/26/2014 | Biochemical Oxygen Demand | 290 | mg/L |
| 2013-2014 | SWL-344-2 | 2/26/2014 | Biochemical Oxygen Demand | 91 | mg/L |
| 2013-2014 | SWL-344-1 | 2/26/2014 | Chemical Oxygen Demand | 680 | mg/L |
| 2013-2014 | SWL-344-2 | 2/26/2014 | Chemical Oxygen Demand | 320 | mg/L |
| 2013-2014 | SWL-344-1 | 2/26/2014 | Copper, Total | 0.052 | mg/L |
| 2013-2014 | SWL-344-2 | 2/26/2014 | Copper, Total | 0.037 | mg/L |
| 2013-2014 | SWL-344-3 | 2/26/2014 | Copper, Total | 0.025 | mg/L |

| Reporting Period | Sampling Location | Sample Date | Parameter | Result | Unit |
|---|---|---|---|---|---|
| 2013-2014 | SWL-344-1 | 2/26/2014 | Iron, Total | 1.2 | mg/L |
| 2013-2014 | SWL-344-2 | 2/26/2014 | Iron, Total | 4.1 | mg/L |
| 2013-2014 | SWL-344-3 | 2/26/2014 | Iron, Total | 2 | mg/L |
| 2013-2014 | SWL-344-1 | 2/26/2014 | Nitrogen, Nitrate | 0.69 | mg/L |
| 2013-2014 | SWL-344-3 | 2/26/2014 | Nitrogen, Nitrate | 0.71 | mg/L |
| 2013-2014 | SWL-344-1 | 2/26/2014 | Nitrogen, Nitrite | 0.89 | mg/L |
| 2013-2014 | SWL-344-1 | 2/26/2014 | Zinc, Total | 0.57 | mg/L |
| 2013-2014 | SWL-344-2 | 2/26/2014 | Zinc, Total | 0.37 | mg/L |
| 2013-2014 | SWL-344-3 | 2/26/2014 | Zinc, Total | 0.16 | mg/L |
| 2014-2015 | SWL-344-1 | 10/31/2014 | Aluminum, Total | 6.9 | mg/L |
| 2014-2015 | SWL-344-2 | 10/31/2014 | Aluminum, Total | 3.9 | mg/L |
| 2014-2015 | SWL-344-1 | 10/31/2014 | Biochemical Oxygen Demand | 120 | mg/L |
| 2014-2015 | SWL-344-2 | 10/31/2014 | Biochemical Oxygen Demand | 200 | mg/L |
| 2014-2015 | SWL-344-1 | 10/31/2014 | Chemical Oxygen Demand | 730 | mg/L |
| 2014-2015 | SWL-344-2 | 10/31/2014 | Chemical Oxygen Demand | 500 | mg/L |
| 2014-2015 | SWL-344-1 | 10/31/2014 | Copper, Total | 0.072 | mg/L |
| 2014-2015 | SWL-344-2 | 10/31/2014 | Copper, Total | 0.032 | mg/L |
| 2014-2015 | SWL-344-1 | 10/31/2014 | Iron, Total | 7.9 | mg/L |
| 2014-2015 | SWL-344-2 | 10/31/2014 | Iron, Total | 5.3 | mg/L |
| 2014-2015 | SWL-344-1 | 10/31/2014 | Oil and Grease | 51 | mg/L |
| 2014-2015 | SWL-344-2 | 10/31/2014 | pH | 8.6 | SU |
| 2014-2015 | SWL-344-1 | 10/31/2014 | Total Suspended Solids | 260 | mg/L |
| 2014-2015 | SWL-344-2 | 10/31/2014 | Total Suspended Solids | 390 | mg/L |
| 2014-2015 | SWL-344-1 | 10/31/2014 | Zinc, Total | 1.2 | mg/L |
| 2014-2015 | SWL-344-2 | 10/31/2014 | Zinc, Total | 0.48 | mg/L |
| 2014-2015 | SWL-344-2 | 12/11/2014 | Aluminum, Total | 1.6 | mg/L |
| 2014-2015 | SWL-344-1 | 12/11/2014 | Biochemical Oxygen Demand | 100 | mg/L |
| 2014-2015 | SWL-344-2 | 12/11/2014 | Biochemical Oxygen Demand | 49 | mg/L |
| 2014-2015 | SWL-344-1 | 12/11/2014 | Chemical Oxygen Demand | 230 | mg/L |
| 2014-2015 | SWL-344-1 | 12/11/2014 | Copper, Total | 0.0059 | mg/L |
| 2014-2015 | SWL-344-2 | 12/11/2014 | Copper, Total | 0.0053 | mg/L |
| 2014-2015 | SWL-344-2 | 12/11/2014 | Iron, Total | 2.9 | mg/L |
| 2014-2015 | SWL-344-1 | 12/11/2014 | Oil and Grease | 27.4 | mg/L |
| 2014-2015 | SWL-344-2 | 12/11/2014 | Oil and Grease | 16.3 | mg/L |
| 2014-2015 | SWL-344-2 | 12/11/2014 | pH | 6.4 | SU |
| 2014-2015 | SWL-344-2 | 12/11/2014 | Total Suspended Solids | 120 | mg/L |
| 2014-2015 | SWL-344-1 | 12/11/2014 | Zinc, Total | 0.11 | mg/L |
| 2014-2015 | SWL-344-2 | 12/11/2014 | Zinc, Total | 0.17 | mg/L |
| 2015-2016 | Storm Drain East | 12/3/2015 | Biochemical Oxygen Demand | 110 | mg/L |
| 2015-2016 | Storm Drain West | 12/3/2015 | Biochemical Oxygen Demand | 99 | mg/L |

| Reporting Period | Sampling Location | Sample Date | Parameter | Result | Unit |
|---|---|---|---|---|---|
| 2015-2016 | Storm Drain East | 12/3/2015 | Chemical Oxygen Demand | 160 | mg/L |
| 2015-2016 | Storm Drain West | 12/3/2015 | Chemical Oxygen Demand | 160 | mg/L |
| 2015-2016 | Storm Drain East | 12/3/2015 | Nitrogen, Nitrate | 1.1 | mg/L |
| 2015-2016 | Storm Drain West | 12/3/2015 | Nitrogen, Nitrate | 2 | mg/L |
| 2015-2016 | Storm Drain East | 12/10/2015 | Biochemical Oxygen Demand | 69 | mg/L |
| 2015-2016 | Storm Drain West | 12/10/2015 | Biochemical Oxygen Demand | 54 | mg/L |
| 2015-2016 | Storm Drain East | 12/10/2015 | Chemical Oxygen Demand | 200 | mg/L |
| 2015-2016 | Storm Drain West | 12/10/2015 | Chemical Oxygen Demand | 170 | mg/L |
| 2015-2016 | Storm Drain East | 12/10/2015 | Nitrogen, Nitrate | 0.8 | mg/L |
| 2015-2016 | Storm Drain West | 12/10/2015 | Nitrogen, Nitrate | 1.4 | mg/L |
| 2015-2016 | Storm Drain East | 12/10/2015 | pH | 6.3 | SU |
| 2015-2016 | Storm Drain West | 12/10/2015 | pH | 6 | SU |
| 2015-2016 | Storm Drain East | 3/4/2016 | Biochemical Oxygen Demand | 45 | mg/L |
| 2015-2016 | Storm Drain West | 3/4/2016 | Biochemical Oxygen Demand | 43 | mg/L |
| 2015-2016 | Storm Drain East | 3/4/2016 | Nitrogen, Nitrate | 0.87 | mg/L |
| 2015-2016 | Storm Drain West | 3/4/2016 | Nitrogen, Nitrate | 0.92 | mg/L |
| 2015-2016 | Storm Drain East | 3/10/2016 | pH | 6.3 | SU |
| 2015-2016 | Storm Drain West | 3/10/2016 | pH | 6 | SU |
| 2016-2017 | Storm Drain East | 12/8/2016 | Biochemical Oxygen Demand | 200 | mg/L |
| 2016-2017 | Storm Drain West | 12/8/2016 | Biochemical Oxygen Demand | 38 | mg/L |
| 2016-2017 | Storm Drain East | 12/8/2016 | Chemical Oxygen Demand | 500 | mg/L |
| 2016-2017 | Storm Drain West | 12/8/2016 | Chemical Oxygen Demand | 250 | mg/L |
| 2016-2017 | Storm Drain East | 12/8/2016 | Nitrogen, Nitrate | 0.8 | mg/L |
| 2016-2017 | Storm Drain East | 12/8/2016 | Oil and Grease | 34.1 | mg/L |
| 2016-2017 | Storm Drain East | 12/8/2016 | Total Suspended Solids | 120 | mg/L |
| 2016-2017 | Storm Drain West | 12/8/2016 | Total Suspended Solids | 170 | mg/L |
| 2016-2017 | Storm Drain East | 12/15/2016 | Biochemical Oxygen Demand | 110 | mg/L |
| 2016-2017 | Storm Drain West | 12/15/2016 | Biochemical Oxygen Demand | 75 | mg/L |
| 2016-2017 | Storm Drain West | 12/15/2016 | Chemical Oxygen Demand | 330 | mg/L |
| 2016-2017 | Storm Drain East | 12/15/2016 | Chemical Oxygen Demand | 500 | mg/L |
| 2016-2017 | Storm Drain East | 12/15/2016 | Oil and Grease | 19.2 | mg/L |
| 2016-2017 | Storm Drain West | 12/15/2016 | Oil and Grease | 20.8 | mg/L |
| 2016-2017 | Storm Drain West | 12/15/2016 | pH | 6.41 | SU |
| 2016-2017 | Storm Drain East | 12/15/2016 | Total Suspended Solids | 310 | mg/L |
| 2016-2017 | Storm Drain West | 12/15/2016 | Total Suspended Solids | 250 | mg/L |

# Attachment 3: Alleged Dates of Exceedances by Darling Ingredients, Inc. February 24, 2012 to February 24, 2017

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center; San Francisco Downtown, California station, GHCND:USW00023272 when a stormwater discharge from the Facility is likely to have occurred. http://www.ncdc.noaa.gov/cdo-web/search

| 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| 2/29 | 1/5 | 2/2 | 2/6 | 1/5 | 1/2 |
| 3/1 | 1/23 | 2/6 | 2/8 | 1/6 | 1/3 |
| 3/13 | 2/7 | 2/7 | 4/5 | 1/9 | 1/4 |
| 3/14 | 2/8 | 2/8 | 4/7 | 1/13 | 1/7 |
| 3/15 | 2/19 | 2/9 | 4/24 | 1/14 | 1/8 |
| 3/16 | 3/6 | 2/26 | 4/25 | 1/15 | 1/9 |
| 3/24 | 3/31 | 2/28 | 6/10 | 1/16 | 1/10 |
| 3/25 | 4/1 | 3/3 | 11/2 | 1/17 | 1/11 |
| 3/31 | 4/4 | 3/5 | 11/9 | 1/18 | 1/12 |
| 4/10 | 6/25 | 3/25 | 11/15 | 1/19 | 1/18 |
| 4/12 | 9/21 | 3/26 | 11/24 | 1/22 | 1/19 |
| 4/13 | 11/29 | 3/29 | 12/3 | 1/29 | 1/20 |
| 4/25 | 11/20 | 3/31 | 12/10 | 2/2 | 1/21 |
| 4/26 | 12/6 | 4/1 | 12/11 | 2/17 | 1/22 |
| 6/4 | | 4/4 | 12/13 | 2/18 | 1/23 |
| 10/22 | | 4/25 | 12/18 | 2/19 | 2/3 |
| 10/23 | | 9/25 | 12/19 | 3/4 | 2/4 |
| 10/24 | | 10/25 | 12/20 | 3/5 | 2/5 |
| 10/31 | | 10/31 | 12/21 | 3/6 | 2/6 |
| 11/1 | | 11/13 | 12/22 | 3/7 | 2/7 |
| 11/8 | | 11/19 | 12/24 | 3/9 | 2/8 |
| 11/16 | | 11/20 | | 3/10 | 2/9 |
| 11/17 | | 11/22 | | 3/11 | 2/16 |
| 11/20 | | 11/29 | | 3/12 | 2/17 |
| 11/21 | | 11/30 | | 3/13 | 2/18 |
| 11/28 | | 12/2 | | 3/20 | |
| 11/30 | | 12/3 | | 3/21 | |
| 12/1 | | 12/5 | | 4/8 | |
| 12/2 | | 12/6 | | 4/9 | |
| 12/5 | | 12/11 | | 4/14 | |
| 12/15 | | 12/12 | | 4/22 | |
| 12/17 | | 12/14 | | 4/27 | |
| 12/21 | | 12/15 | | 10/14 | |
| 12/22 | | 12/16 | | 10/15 | |
| 12/23 | | 12/17 | | 10/16 | |
| 12/25 | | 12/19 | | 10/27 | |
| 12/26 | | | | 10/28 | |
| 12/28 | | | | 10/30 | |
| 12/29 | | | | 11/19 | |

| | | | | | |
|---|---|---|---|---|---|
| | | | | 11/20 | |
| | | | | 11/22 | |
| | | | | 11/26 | |
| | | | | 11/27 | |
| | | | | 12/7 | |
| | | | | 12/8 | |
| | | | | 12/9 | |
| | | | | 12/10 | |
| | | | | 12/15 | |
| | | | | 12/23 | |

## Attachment 4: Wastewater Effluent Limitations

### A. San Francisco's Public Works Code, Article 4.1 – Industrial Waste ("Pretreatment Ordinance")

| Pollutant Parameter | Units | Effluent Limitation | Sample Type |
|---|---|---|---|
| pH | SU | 6.0 min.; 9.5 max. | Any grab sample |
| Dissolved Sulfides | mg/L | 0.5 | Any grab sample |
| Temperature | F | 125 | Any grab sample |
| Hydrocarbon Oil and Grease | mg/L | 100 | Any grab sample |
| Total Recoverable Oil and Grease | mg/L | 300 | Grab samples averaged over a production week |

### B. Industrial User Class I Wastewater Permits: No. 10-06513; No. 13-06983; No. 16-06568 ("Pretreatment Permits")

| Pollutant Parameter | Units | Effluent Limitation | Sample Type |
|---|---|---|---|
| pH | SU | 5.0 min. | N/A |
| pH | SU | 6.0 min.; 9.5 max. | Any grab sample |
| Dissolved Sulfides | mg/L | 0.5 | Any grab sample |
| Temperature | F | 125 | Any grab sample |
| Hydrocarbon Oil and Grease | mg/L | 100 | Any grab sample |
| Total Recoverable Oil and Grease | mg/L | 300 | Grab samples averaged over a production week |
| Arsenic Total | mg/L | 4.0 | 24-hour composite sample |
| Cadmium Total | mg/L | 0.5 | 24-hour composite sample |
| Chromium Total | mg/L | 5.0 | 24-hour composite sample |
| Copper Total | mg/L | 4.0 | 24-hour composite sample |
| Lead Total | mg/L | 1.5 | 24-hour composite sample |
| Mercury Total | mg/L | 0.05 | 24-hour composite sample |
| Nickel Total | mg/L | 2.0 | 24-hour composite sample |
| Silver Total | mg/L | 0.6 | 24-hour composite sample |
| Zinc Total | mg/L | 7.0 | 24-hour composite sample |
| Cyanide Total | mg/L | 1.0 | Any grab sample |
| Phenols | mg/L | 23 | Any grab sample |

## Attachment 5: Table of Wastewater Effluent Limitation Exceedances for Darling Ingredients, Inc.

Table containing each wastewater sampling result which exceeds effluent limitations. Effluent limitations from the Pretreatment Ordinance and Pretreatment Permits are listed in Attachment 4. All wastewater samples were reported during the past five (5) years.

| Reporting Period | Sampler | Sample Location | Sample Date | Pollutant Parameter | Result | Unit | No. Violations |
|---|---|---|---|---|---|---|---|
| 7/1/2012-12/31/2012 | PUC | Not Identified | 11/14/12 | Dissolved Sulfides | 0.72 | mg/L | 1 |
| 7/1/2012-12/31/2012 | PUC | Not Identified | 11/15/12 | Dissolved Sulfides | 0.7 | mg/L | 1 |
| 7/1/2012-12/31/2012 | PUC | Not Identified | 11/28/12 | Dissolved Sulfides | 0.52 | mg/L | 1 |
| 7/1/2013-12/31/2013 | PUC | Sample Box | 8/30/13-9/12/13 | Average Total Recoverable Oil and Grease | 509.2 | mg/L | 5 |
| 7/1/2013-12/31/2013 | PUC | Site | 8/30/13-9/17/13 | Average Total Recoverable Oil and Grease | 4239 | mg/L | 5 |
| 7/1/2013-12/31/2013 | PUC | Manhole #2 | 9/12/13 | pH | 4.41 | SU | 2 |
| 7/1/2013-12/31/2013 | Darling | Condensation Pit02 | 11/19/13 | Average Total Recoverable Oil and Grease | 360 | mg/L | 5 |
| 7/1/2013-12/31/2013 | Darling | Condensation Pit02 | 11/19/13 | pH | 5.4 | SU | 1 |
| 7/1/2013-12/31/2013 | Darling | Condensate Pit04 | 11/21/13 | pH | 4.3 | SU | 2 |
| 7/1/2013-12/31/2013 | Darling | Condensate Pit04 | 11/21/13 | pH | 4.3 | SU | 2 |
| 7/1/2013-12/31/2013 | Darling | Condensation Pit05 | 11/22/13 | pH | 4.7 | SU | 2 |
| 7/1/2013-12/31/2013 | Darling | Condensation Pit05 | 11/22/13 | pH | 4.7 | SU | 2 |
| 1/1/2015-6/30/2015 | PUC | Sample Box | 4/22/15 | Average Total Recoverable Oil and Grease | 1056.8 | mg/L | 5 |
| 1/1/2015-6/30/2015 | PUC | Not Identified | 4/29/15 | Dissolved Sulfides | 0.54 | mg/L | 1 |
| 7/1/2015-12/31/2015 | PUC | Sample Box | 12/15/15 | Copper Total | 6.43 | mg/L | 1 |
| 7/1/2015-12/31/2015 | PUC | Sample Box | 12/15/15 | pH | 5.2 | SU | 1 |
| 1/1/2016-6/30/2016 | PUC | Sample Box | 6/2/16-6/10/16 | Average Total Recoverable Oil and Grease | 470.8 | mg/L | 5 |

| Reporting Period | Sampler | Sample Location | Sample Date | Pollutant Parameter | Result | Unit | No. Violations |
|---|---|---|---|---|---|---|---|
| 7/1/2016-12/31/2016 | PUC | Site | 10/12/16-10/21/16 | Average Total Recoverable Oil and Grease | 1608 | mg/L | 5 |
| 7/1/2016-12/31/2016 | PUC | Pump Stat. | 10/21/16 | pH | 5.86 | SU | 1 |
| 7/1/2016-12/31/2016 | PUC | Site Sample Box | 10/12/16-10/21/16 | Average Total Recoverable Oil and Grease | 1037 | mg/L | 5 |